

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is made and entered into by and among the **United States of America** ("United States"), acting through the **United States Department of Justice**, on behalf of the **Department of Housing and Urban Development** ("HUD"), collectively the "Agencies," and **Mr. Thomas Brewer and Mrs. Betty Brewer** ("the Brewers"). The Brewers and the Agencies identified above shall be collectively referred to in this Settlement Agreement as the "Parties."

WHEREAS the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 et seq. ("Act"), requires certain developers, as that term is defined in Section 1701(5) of the Act, to file a statement of record with HUD and to furnish a property report to purchasers of lots subject to the Act, prohibits developers from engaging in improper or fraudulent practices in connection with the sale of lots subject to the Act, and provides that failure to provide a property report to a purchaser authorizes the purchaser to rescind the purchase transaction;

WHEREAS Buyers Source Sugarmill, L.L.C., a Virginia limited liability company, Buyers Source Savannah, L.L.C., a Virginia limited liability company, Buyers Source Valley Group, L.L.C., a Virginia limited liability company, and Island Realty, L.L.C. f/k/a Buyers Source Island, L.L.C., an Arkansas limited liability company (collectively referred to as "Buyers Source") are, or were, primarily engaged in the sale of lots, including lots located in subdivisions in Sugarmill Woods, Florida; Savannah Lakes, South Carolina; Apple Valley, Ohio; and Holiday Island, Arkansas (hereinafter the "Subdivisions");

WHEREAS Thomas Brewer was a principal of the Buyers Source companies and Betty Brewer was a principal in at least one of the Buyers Source companies;

WHEREAS the Agencies allege that, in connection with lots located in the Subdivisions, Buyers Source and the Brewers were developers under the Act and failed

to file a statement of record with HUD or furnish property reports to certain purchasers of lots located in the Subdivisions, and engaged in a series of improper sales practices in connection with the sale of lots located in the Subdivisions (collectively the "Prohibited Practices");

WHEREAS the Agencies are investigating Buyers Source's Prohibited Practices and have commenced litigation against Thomas Brewer, Buyers Source and other third parties in connection with the Prohibited Practices;

WHEREAS HUD contends that Thomas Brewer violated the Act in connection with the Prohibited Practices by, among other things, selling and offering to sell lots with knowledge that Buyers Source sales agents were selling lots without providing required disclosures and by using various fraudulent practices;

WHEREAS HUD further contends that Betty Brewer is liable for violations of the Act in connection with the Prohibited Practices by virtue of her status as a former part-owner of at least one of the Buyers Source companies;

WHEREAS the Brewers agree that the financial obligations set forth in the Agreement are non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(7) and that the Agencies retain the right to establish in a bankruptcy proceeding that the Brewers are liable for fraud to establish the non-dischargeability of the debt under 11 U.S.C. § 523(a)(2), and the Brewers reserve the right to claim in any such proceeding that they are not liable for fraud;

WHEREAS the Agencies desire to use the monetary penalties in this Agreement to aid injured purchasers;

WHEREAS the Brewers deny any wrongdoing in connection with the alleged Prohibited Practices, and deny that they violated the Act;

WHEREAS the Settlement Agreement shall not constitute an admission of wrongdoing, liability, or legal fault on the part of the Brewers for any conduct underlying

this Settlement Agreement, nor shall it be construed as an admission that any person or entity acted wrongfully, unjustifiably or otherwise;

WHEREAS, to avoid litigation and further expense, and to reach a mutually satisfactory settlement and compromise of the Agencies' allegations against the Brewers;

NOW, THEREFORE, in consideration of the mutually negotiated promises, covenants, and obligations in this Settlement Agreement (hereinafter, the "Settlement Agreement" or the "Agreement"), the Parties reach a complete and final settlement as set forth below:

1. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement (hereinafter, the "Effective Date").
2. The Brewers shall pay \$215,000 to the individual or entity appointed by the Court in Jackson v. Buyers Source Sugarmill, L.L.C., Case No. 2:03cv591 (E.D. Va.), for the purpose of collecting and distributing said funds ("the Receiver"). In the event that prior to the Court's appointment of the Receiver, payments come due or the Lots or Promissory Notes referred to in Paragraphs 7-8 must be transferred under the Agreement, payments shall be made to Donna J. Hall, Receiver, at Troutman, Sanders, LLP, 222 Central Park Avenue, Suite 2000, Virginia Beach, Virginia 23462. The Agencies agree to grant the Brewers a credit of \$60,000, reflecting the financial support that the Brewers represent that they provided since September 2002 to keep the Savannah Lakes Real Estate Group office operational. Because of said credit, the Brewers' net monetary obligation shall be \$155,000 ("the Net Monetary Obligation"). Notwithstanding any other provision of this Agreement, the Parties agree that the Net Monetary Obligation, together with the obligations set forth in paragraphs 7-9, is a penalty or forfeiture that is payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. The Parties further agree that the amount of the penalty reflects the disgorgement of the Brewers' profits from their involvement in

the Buyers Source companies, limited only by the amount of the Brewers' profits and their represented ability to pay. In the event that the Brewers should declare bankruptcy, the Brewers shall not oppose a motion by the United States, the Agencies, and/or the Receiver to lift the stay as to the Net Monetary Obligation or any other obligation set forth in this Agreement. In the event that the Brewers should declare bankruptcy within ninety days of the deposit of the Initial Payment or Full Pay-Off, defined in paragraphs 3-4, or the recording of the Deed of Trust, defined in paragraph 6, whichever is later, the Brewers shall send written notice via Federal Express to Samuel C. Kaplan at the Department of Justice, Civil Division, Federal Programs Branch, 20 Massachusetts Ave., Room 7302, Washington, D.C. 20001, and the Agencies shall have the right to withdraw from the Agreement and pursue their claims in the bankruptcy court by sending written notice to Mr. Brewer within 30 days of their receipt of notice concerning the declaration of bankruptcy.

3. On or before April 1, 2004, the Brewers shall make an initial \$20,000 payment to the Receiver (hereinafter, "the Initial Payment").

4. After the Initial Payment, the Brewers shall satisfy their remaining obligation by paying the Receiver, subject to paragraph 5, (A) \$4,295.64 on the first day of every July, October, January, and April for three years ("the Quarterly Payments") and (B) a payment of \$101,308.63 ("the Balloon Payment") within three years of the Initial Payment. The Brewers shall make the first Quarterly Payment on or before July 1, 2004. If the Brewers fail to make the Initial Payment or any Quarterly Payment within the required time period, or fail to make the Balloon Payment by April 1, 2007, the Receiver shall have the right to collect interest from the Brewers on any late payment or outstanding balance at a rate of ten (10) percent per annum, in addition to retaining any other remedies provided by law, equity, or this Agreement, including the right of the Agencies, the United States, and/or the Receiver to move that the Brewers be held in contempt of any order entered by the Court. The Brewers may also satisfy their

monetary obligation under paragraphs 2-5 by paying \$82,500 to the Receiver by April 1, 2004 ("the Full Pay-Off").

5. Any payments made to the receiver by October 1, 2004, in excess of the sum of the first two quarterly payments (\$8,591.28) other than payments otherwise required by the Agreement ("the Excess Payment") shall reduce the Brewers' Net Monetary Obligation by double the amount of the Excess Payment. In the event that the Brewers choose to accelerate payments or to pay off their remaining obligation ahead of schedule, the Agencies agree that there will be no penalty for so doing. The Excess Payment shall not alter the amount or number of the Quarterly Payments until the Brewers' Net Monetary Obligation and any outstanding interest on late payments or outstanding balance are paid in full, at which point no further payments shall be due. The amount by which the Quarterly Payments shall reduce the Brewers' Net Monetary Obligation shall be determined by assuming that the Net Monetary Obligation is amortized over a ten-year period at an interest rate of five (5) percent as set forth in the amortization schedule attached as Exhibit A.

6. The Brewers' Net Monetary Obligation, together with any interest accrued, will be secured by a First Deed of Trust on the property at 113 Northgate Lane in Suffolk, Virginia ("the Property"). The security instrument establishing said interest ("the Deed of Trust") and the Promissory Note are attached as Exhibit B. On or before April 1, 2004, the Brewers shall record the Deed of Trust with the city of Suffolk and pay all applicable fees. This Deed of Trust shall not be subordinate to the interest of any other individual or entity, and the Brewers shall procure a title-insurance policy in the name of Donna J. Hall, Receiver. The Receiver shall release the Deed of Trust and Promissory Note and provide an affidavit and certificate of satisfaction within ninety days of satisfaction of the Net Monetary Obligation by the Brewers, provided that the Brewers do not declare bankruptcy during that period, or upon any written waiver of the Net Monetary Obligation that the Agencies may elect, at their sole discretion, to give the Brewers at a later date. If, within the specified time period, the Receiver does not

release the Deed of Trust or does not provide an Affidavit and Certificate of Satisfaction, the Agencies agree to move the Court to order the Receiver to do so.

7. The Brewers hereby assign to the Receiver, or if no receiver has yet been appointed, to Donna J. Hall, Receiver, the right to collect and receive payment on promissory notes attached as Exhibits C, D, and E to the Agreement ("the Promissory Notes"), and shall execute any document necessary to effect the assignments within seven days of the Effective Date. Any obligations required under the Promissory Notes shall be retained entirely by the Brewers and are in no way assumed by or assigned to the Agencies or the Receiver. The parties agree that the amount of the Brewers' Net Monetary Obligation does not reflect a credit afforded by the Agencies to the Brewers in exchange for the Brewers' assignment of the Promissory Notes, and that the assignment of the right to receive payment under the Promissory Notes does not constitute cancellation of indebtedness.

8. The Brewers represent that they own Lots 1 and 2 in the Plantation Harbor subdivision in Havelock, North Carolina ("the Lots") and that no individual or entity holds any mortgage or other secured interest in the Lots. The Brewers shall transfer ownership of the Lots to the Receiver, or if no receiver has yet been appointed, to Donna J. Hall, Receiver, within two weeks of the Effective Date, and shall pay any applicable fees, dues, and taxes associated with the transfer or that are due with respect to the Lots as of the date of the transfer. The Brewers shall procure a title-insurance policy in the name of Donna J. Hall, Receiver, for the Lots.

9. The Brewers represent that they have disclosed to the Agencies in an affidavit executed under penalty of perjury on March 1, 2004, all assets that they own, possess, or control as of that date. In the event that the Brewers have failed to disclose all of their assets as of the Effective Date in their affidavit, and in addition to any other obligation set forth in this Agreement, the Brewers shall transfer any undisclosed assets, up to an amount not exceeding \$3 million, to the Receiver within two weeks of written notice from the Receiver or the Agencies.

10. The Brewers agree to cooperate with the Agencies in their ongoing investigation of and ongoing or potential litigation with Buyers Source and any other entity related to this matter. The Brewers further agree to cooperate with the Agencies and the Receiver in their efforts to collect and distribute any sums paid or due under this Agreement, including any investigation meant to determine whether the Brewers disclosed all assets that they owned, controlled, or possessed as of the Effective Date.

11. The Brewers shall not violate any provision of the Act or its implementing regulations, either in their individual capacities, through a company owned or controlled by the Brewers, or in concert with any other individual or entity. The Brewers shall not engage in any transaction, either in their individual capacities, through a company owned or controlled by the Brewers, or in concert with any other individual or entity, in which a time-share interest is used in any fashion as an item of exchange or marketing inducement in the sale of real property.

12. In consideration of the Brewers' full settlement of the obligations set forth in this Settlement Agreement, the Agencies hereby waive, release, and remit the Brewers from any civil or administrative claim, sanction, or remedy, direct or indirect, that the Agencies have for or relating to any matter underlying this Settlement Agreement or involving Buyers Source, including the Act and any statute, regulation, or common-law theory creating a cause of action for civil or administrative claims, sanctions, remedies, damages, or penalties. It is further understood that in consideration of the Brewers' full settlement of the obligations set forth in the Settlement Agreement, the Agencies will not seek to enforce against the Brewers' personally any judgment that they may obtain against Buyers Source or any other entity related to this matter.

13. The Brewers hereby waive, release, and remit any and all claims, directly or indirectly, against the Agencies, or any employee of the Agencies, for the actions of the Agencies in pursuing their rights and claims leading to the settlement of this matter.

14. Notwithstanding any other term or condition of this Settlement Agreement, specifically reserved and excluded from the scope and terms of the releases in this

Settlement Agreement are any and all claims based on such obligations as are created by this Settlement Agreement.

15. This Settlement Agreement constitutes the complete agreement between the Parties as to the matters addressed herein. This Settlement Agreement may not be amended except by written consent of the Parties.

16. The Parties to this Settlement Agreement shall bear their own attorney's fees and costs, including the preparation and performance of this Settlement Agreement.

17. The Parties represent that this Settlement Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. No provision of this Settlement Agreement shall be construed against any party by reason of such party having drafted such provision of the Settlement Agreement.

18. This Settlement Agreement is intended for the benefit of the Agencies and the Brewers, and by this instrument the Parties do not waive, compromise, or release any claims or causes of action against any other person or entity not expressly released by this Settlement Agreement.

19. Failure by any Party to enforce any provision of this Settlement Agreement shall not be construed as a waiver by such Party of any provision, nor in any way affect the validity of this Settlement Agreement or any part thereof.

20. If any provision of this Settlement Agreement is determined to be invalid or unenforceable for any reason, and subject to paragraphs 2 and 24, then such provisions shall be treated as severed from the remainder of this Settlement Agreement and shall not affect the validity and enforceability of all the other provisions of this Settlement Agreement as long as such severance does not materially change the Parties' rights and obligations.

21. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

22. Each person who signs this Settlement Agreement in a representative capacity warrants that his or her execution of this Settlement Agreement is duly

authorized, executed, and delivered by and for the individual or entity for which he or she signs.

23. Upon the effective date of this Settlement Agreement, and subject to Paragraphs 2 and 24, the Agencies shall consider all matters underlying this Settlement Agreement closed, consistent with the faithful performance by the Parties of the obligations imposed herein.

24. Within a reasonable period after the Effective Date, the parties agree to move jointly that the Court enter the Order attached as Exhibit F ("Consent Decree") as part of the proceedings in Alphonso Jackson v. Buyers Source Sugarmill, L.L.C., Civ. No. 2:03cv591 (E.D. Va.). In the event that the Court declines to enter the Consent Decree, or, in the alternative, an order requiring the Brewers to abide by the terms of this Agreement, or declines to appoint a receiver, the Agencies reserve the right to designate a different entity, including the Agencies or the United States Treasury, to receive all payments and assets due under this Agreement or to withdraw from the Agreement and declare it null and void by providing written notice to the Brewers within 30 days of either the Court's decision not to enter the Consent Decree or the Court's decision not to appoint a receiver. If the Agencies elect to withdraw from the Agreement for any reason, and if the Receiver does not do so on her own initiative, the Agencies shall move the Court to order the Receiver to return any monies previously paid by, property transferred by, and promissory notes assigned by the Brewers pursuant to this Agreement, and to provide the Brewers a release of the Deed of Trust.

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ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: <u>March 23, 2004</u>	By: <u>Joseph H. Hunt</u> JOSEPH H. HUNT Director United States Department of Justice Civil Division Federal Programs Branch 20 Massachusetts Ave., N.W. Washington, DC 20001
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ON BEHALF OF MR. AND MRS. THOMAS BREWER

<p>Dated: <u>SNS</u> <u>02-27-2004</u></p>	<p>By: <u>Thomas Brewer</u> MR. THOMAS BREWER 723 Jones Street Suffolk, Virginia</p>
<p>Dated: <u>3-23-04</u></p>	<p>By: <u>Betty Brewer</u> MRS. BETTY BREWER 723 Jones Street Suffolk, Virginia</p>

ON BEHALF OF THE U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

<p>Dated: <u>3/23/04</u></p>	<p>By: <u></u> JOHN C. WEICHER Assistant Secretary for Housing Federal Housing Commissioner U.S. Department of Housing and Urban Development 451 Seventh Street, S.W., Room 9100 Washington, D.C. 20410</p>
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